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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,457	09/25/2003	Barry E. Gilman	GIL001-101	4612

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EXAMINER

AYRES, TIMOTHY MICHAEL

ART UNIT PAPER NUMBER

3637

DATE MAILED: 06/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,457

Applicant(s)

GILMAN, BARRY E.

Examiner

Timothy M. Ayres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Translation for DE 101 21 804</u> . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1- 9 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeziorowski (US Patent 4,859,010) in view of the German document (DE 10121804 A1), and further in view of Rankin (U.S. Patent 6,464,089).
3. Regarding claim 1: In Fig. 1, Jeziorowski shows a refrigerator (10) comprising: a cabinet shell (A), a liner (B) arranged in the cabinet shell (A) and defining a compartment (14), a door (12) attached to and movable relative to the cabinet shell (A) in order to selectively access the compartment (14), and at least one shelving unit (32) provided in the compartment (14), said at least one shelving unit (32) being adapted to support items thereon. Jeziorowski lacks a retainer assembly for securing items on the at least one shelving unit, said retainer assembly including a divider element mounted for movement along a defined axis relative to the at least one shelving unit and dividing the at least one shelving unit into first and second laterally spaced storage zones, and a biasing member urging the divider element in a predetermined direction, wherein items positioned on the at least one shelving unit are automatically engaged by the divider element in order to be maintained in a snug configuration in the first storage zone while

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maintaining the second storage zone available as additional storage space. In Fig. 6, the German document teaches a retainer assembly for securing items on the at least one shelving unit, said retainer assembly including a divider element (6) mounted for movement along a defined axis relative to the at least one shelving unit (14) and dividing the at least one shelving unit (14) into first and second laterally spaced storage zones. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the refrigerator of Jeziorowski with the retainer assembly of the German document in order to divide the shelf into two storage areas. In Fig. 1, Rankin teaches a retainer assembly (10) for securing items on at least one shelving unit, said retainer assembly (10) including a divider element (34) mounted for movement along a defined axis relative to the at least one shelving unit (14), and a biasing member (20) urging the divider element (34) in a predetermined direction, wherein items positioned on the at least one shelving unit (14) are automatically engaged by the divider element (34) in order to be maintained in a snug configuration in the first storage zone while maintaining the second storage zone available as additional storage space. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the refrigerator of Jeziorowski, already modified by the German document, with the biasing member of Rankin in order maintain items placed in the first storage area in a snug configuration.

4. Regarding claim 2: In Fig. 1, Jeziorowski, as modified by the German document and Rankin, shows the refrigerator according to claim 1. The German document also teaches a retainer assembly further including a support arm (8) extending from the

divider element (6), said support arm mounting the divider element for sliding movement relative to the at least one shelving unit.

5. Regarding claim 3: In Fig. 1, Jeziorowski shows a refrigerator (10) comprising: a cabinet shell (A), a liner (B) arranged in the cabinet shell (A) and defining a compartment (14), a door (12) attached to and movable relative to the cabinet shell (A) in order to selectively access the compartment (14), and at least one shelving unit (32) provided in the compartment (14), said at least one shelving unit (32) being adapted to support items thereon, wherein the at least one shelving unit (32) is defined by a door pick-off bucket including at least one upstanding wall (40). Jeziorowski lacks a retainer assembly for securing items on the at least one shelving unit, said retainer assembly including a divider element mounted for movement along a defined axis relative to the at least one shelving unit, and a biasing member urging the divider element in a predetermined direction, wherein items positioned on the at least one shelving unit are automatically engaged by the divider element in order to be maintained in a snug configuration, wherein the retainer assembly further includes a support arm extending from the divider element, said support arm mounting the divider element for sliding movement relative to the at least one shelving unit. In Fig. 6, the German document teaches a retainer assembly for securing items on the at least one shelving unit, said retainer assembly including a divider element (6) mounted for movement along a defined axis relative to the at least one shelving unit (14) wherein the retainer assembly further includes a support arm (8) extending from the divider element (6), said support arm (8) mounting the divider element (6) for sliding movement relative to the at

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least one shelving unit (14). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the refrigerator of Jeziorowski with the retainer assembly of the German document in order to divide the shelf into two storage areas. In Fig. 1, Rankin teaches a retainer assembly (10) for securing items on at least one shelving unit, said retainer assembly (10) including a divider element (34) mounted for movement along a defined axis relative to the at least one shelving unit (14), and a biasing member (20) urging the divider element (34) in a predetermined direction, wherein items positioned on the at least one shelving unit (14) are automatically engaged by the divider element (34) in order to be maintained in a snug configuration. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the refrigerator of Jeziorowski, already modified by the German document, with the biasing member of Rankin in order maintain items placed in the first storage area in a snug configuration.

6. Regarding claim 4: In Fig. 1, Jeziorowski, as modified by the German document and Rankin, shows the refrigerator according to claim 3, wherein the at least one upstanding wall (40) constitutes a front wall (40) of the door pick-off bucket (32).

7. Regarding claim 5: In Fig. 1, Jeziorowski shows a refrigerator (10) comprising: a cabinet shell (A), a liner (B) arranged in the cabinet shell (A) and defining a compartment (14), a door (12) attached to and movable relative to the cabinet shell (A) in order to selectively access the compartment (14), and at least one shelving unit (32) provided in the compartment (14), said at least one shelving unit (32) being adapted to support items thereon. Jeziorowski lacks a retainer assembly for securing items on the

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at least one shelving unit, said retainer assembly including a divider element mounted for movement along a defined axis relative to the at least one shelving unit and dividing the at least one shelving unit into first and second laterally spaced storage zones, and a biasing member urging the divider element in a predetermined direction, wherein items positioned on the at least one shelving unit are automatically engaged by the divider element in order to be maintained in a snug configuration, wherein the biasing member constitutes a spiral spring extending directly along a wall of the at least one shelving unit. In Fig. 6, the German document teaches a retainer assembly for securing items on the at least one shelving unit, said retainer assembly including a divider element (6) mounted for movement along a defined axis relative to the at least one shelving unit (14) and dividing the at least one shelving unit (14) into first and second laterally spaced storage zones. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the refrigerator of Jeziorowski with the retainer assembly of the German document in order to divide the shelf into two storage areas. In Fig. 1, Rankin teaches a retainer assembly (10) for securing items on at least one shelving unit, said retainer assembly (10) including a divider element (34) mounted for movement along a defined axis relative to the at least one shelving unit (14), and a biasing member comprising a spiral spring (20) urging the divider element (34) in a predetermined direction, wherein items positioned on the at least one shelving unit (14) are automatically engaged by the divider element (34) in order to be maintained in a snug configuration. It would have been obvious to one of ordinary skill in the art at the time of invention to use the spiral spring of Rankin directly along a wall of the at least one

shelving unit of Jeziorowski, already modified by the German document, in order maintain items in a snug configuration.

8. Regarding claim 6: In Fig. 1, Jeziorowski, as modified by the German document and Rankin, shows the refrigerator of claim 5. In Fig. 3, Rankin also teaches a spiral spring (20) including a first end portion (60), and a second end portion (50), with the first end portion (60) being attached to the divider element (34) and the second end portion (50) being attached to the at least one shelving unit (14).

9. Regarding claim 7: In Fig. 1, Jeziorowski, as modified by the German document and Rankin, shows the refrigerator of claim 1. In Figs. 1 and 3, Rankin also teaches a retainer assembly (34) further including a pair of plates (46) spaced so as to define a cavity between them, said biasing member (20) including a first end portion (60) extending into the defined cavity.

10. Regarding claim 8: In Fig. 1, Jeziorowski, as modified by the German document and Rankin, shows the refrigerator of claim 7. In Fig. 1, Rankin also teaches at least one shelving unit (14) formed with at least one opening on the end (16), said biasing member (20) including a second end portion (50) directly attached to the at least one shelving unit (14) through the opening on the end (16).

11. Regarding claim 9: In Fig. 1, Jeziorowski, as modified by the German document and Rankin, shows the refrigerator of claim 1. In Fig. 1, Rankin also teaches a biasing member constituting a tension spring (20).

12. Regarding claims 19-21: The claimed method of using the shelf retainer to secure items on a shelving unit would have been an obvious method of using the retainer device of Jeziorowski, as modified by the German document and Rankin.

Response to Amendment

13. The declaration filed on 04/06/06 under 37 CFR 1.131 has been considered but is ineffective to overcome the German patent document reference. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the German document reference to either a constructive reduction to practice or an actual reduction to practice. Gaps in the timeline from conception date of May 8, 2001 to the built date of May 29, 2001 need to be explained, as does the gap of over two years from the built date of May 29, 2001 to the filing date of September 25, 2003.

Response to Arguments

14. Applicant's arguments filed 04/06/06 have been fully considered but they are not persuasive. It does not matter whether Rankin and Jeziorowski teach or don't teach securing items on the shelf to prevent toppling. The claims are directed to the divider being urged to provide a sung configuration with selected items on a shelf, which is what is taught by the combination of Jeziorowski in view of Rankin and the German patent document. Regarding the notches 9 and 9' in the divider element of the German

patent document, it is clear from figure 5 and the description on page 7 of the attached translation that the divider can be used in the "usual manner" and does not have to support items in the notches. Please note that a shelf divider without the notches is said to be known on page 1 of the translation and to be available in patent DE 24 37 550 A1. Regarding the arguments for claims 6 and 8, the combination suggested by the examiner would incorporate the structure of Rankin's shelving unit (14) that is required to make the spiral spring function by modifying the shelving structure of Jeriorowski in view of the German patent document into that structure. Specifically adding the opening in the end to allow for the attachment of the second end portion of the spiral spring.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

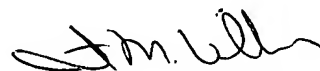
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TMA
6/02/06



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PRIMARY EXAMINER
Art 3637